IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

WEDNESDAY, THE 23RD MAY 2007 / 2ND JYAISHTA 1929

OP.No. 14813 of 1997(L)

PETITIONER:

P.N.RAVINDRANATHAN, A.G.I (G),
FCT, ENGG. WING, PALAKKAD.

BY ADV. SRI.T.R.RAVI

RESPONDENTS:
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1. FOOD CORPORATION OF INDIA REPRESENTED BY ITS ZONAL MANAGER, ZONAL OFFICE, 2 HADDOWS ROAD, MADRAS 600 006.

2. SENIOR REGIONAL MANAGER, FOOD CORPORATION OF INDIA REGIONAL OFFICE, KESAVADASAPURAM, TRIVANDRUM 695 004.

SRI.P.JACOB VARGHESE, SC, FCI

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 23/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP NO.26605 OF 1997 IN OP NO.14813 OF 1997 L

//DISMISSED//

23.5.2007. SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE.

APPENDIX

PETIITONER'S EXHIBITS:

EXT.P1: TRUE COPY OF ORDER NO.V.5(1)/96 DT. 21.8.96 BY R1.

EXT.P2: TRUE COPY OF ORDER NO.VIG.21(4)/94 DT.31.1.96 BY R1.

EXT.P3: TRUE COPY OF CERTIFICATE ISSUED BY K.JAYAKUMAR ADVOCATE DT. 29.10.94.

EXT.P4: TRUE COPY OF ORDER NO.GENL.32(8)/93-VOL.II DT.15.3.94.

EXT.P5: TRUE COPY OF MEMO NO.VIG.21(4)/94 DT.9.10.95 VT SENIOR REGIONAL MANAGER (ENQUIRY REPORT).

RESPONDENTS' EXHIBITS:

EXT.R1(a): TRUE COPY OF CHARGE MEMO NO.VIG.21(4)/94 DT.15.10.1994.

/TRUE COPY/

THOTTATHIL B.RADHAKRISHNAN, J.

O.P.No.14813 OF 1997

Dated this the 23rd day of May, 2007

JUDGMENT

The writ petitioner, then a First Grade Assistant in the service of the first respondent Food Corporation of India, had to perform his duties, which included the briefing of the Standing Counsel for the FCI before this Court. As part of his duties and responsibilities, he, according to him, attended the office of the Standing Counsel of the FCI at Ernakulam on the 12th, 13th, 14th, 19th and 20th of March, 1994. On such basis, he placed his Travelling Allowance and Dearness Allowance bills. He also drew the allowances.

2. The employer first respondent, through its supervisory officers, came to a tentative view that the claim for TA and other amounts was not transparent. They termed it as a case of cheating the employer. This resulted in disciplinary proceedings. The competent authority ordered a domestic inquiry. The disciplinary proceedings culminated in the

imposition of penalty of barring of three increments. Challenge to that within the realm of administrative hierarchy failed. Hence this writ petition.

3. The learned counsel for the petitioner, after having taken me through different aspects of the case on facts, merits and evidence, ultimately urged that Ext.P4 certificate issued by the Standing Counsel regarding the attendance of the petitioner in the office of the Standing Counsel ought not to have been brushed aside but ought to have been relied on as a credible material. He further urged that if it were the intention of the petitioner to cheat and make unlawful gain, the modus operandi would have been different. He also argued that the information allegedly obtained by the employer FCI from the Southern Railways was not proved in the inquiry and the generation of that communication is shadowed. This is said by pointing out that the communication by the Southern Railways to the FCI does not appear to be an official one, but was apparently a confidential one in the name cover of a superior officer in the

FCI viz. Sri.Narayanan Moosath. It is also pointed out that the disciplinary authority disagreed with the findings of the enquiry officer as far as the second charge is concerned.

4. Considering the arguments advanced on behalf of the writ petitioner vis-a-vis the submissions on behalf of the FCI by the Standing Counsel, it has to be first noticed that no case of personal bias, malice or malafides is alleged as against the enquiry officer or the disciplinary authority as such.

5. Along with memo of charges was an appendix, which enlisted seven documents. The case against the petitioner, in a nutshell, is that the Railway tickets which he held out as used by him for travel from Palakkad to Ernakulam on 12th and 19th were tickets which were issued by the Railways only on 13th and 20th of March, 1994 respectively. The next aspect of the case is that though he presented only tickets for travel by First Class, he claimed TA by Second Class A/c tickets which are costlier than First Class tickets. Though such claim and drawal of TA and

other allowances for the Second Class A/c tickets were made, the materials did not include any evidence of the alleged conversion of the First Class tickets to Second Class A/c tickets as claimed by the petitioner.

6. The petitioner was put to notice of the materials being considered in the inquiry. He was admittedly given an opportunity to place his defence and meet the accusation. He also examined two defence witnesses to prove his case that he had reached Ernakulam on the 12th and 19th respectively. He also pressed into service a certificate, which is produced before this Court as Ext.P4, issued by the then Standing Counsel of FCI certifying that the petitioner had attended the office of the Standing Counsel on the 12th, 13th and 14th of March, 1994.

7. However, glaring at him were the communications given by the competent officers of the Southern Railways, which categorically show that the ticket numbers relied on by the petitioner to claim TA were actually issued only on the 13th and

20th of March, 1994 respectively and not on the 12th and 19th of March, 1994 as claimed by him.

8. Confining the contentions to be in the realm of appreciation of evidence and reminding myself of the parameters of judicial review in such matters, I may notice that even if Ext.P4 certificate issued by the Standing Counsel regarding the attendance of the petitioner in the office of the Standing Counsel was given the entire credit, the impugned decision cannot be treated as perverse. While I would assume that the certificate Ext.P4 is beyond challenge, all that the said certificate evidences is that the petitioner had attended the office of the Standing Counsel on the 12th and 14th also, apart from the other days. It need not necessarily mean that he did not travel from Palakkad to Ernakulam on the 13th and 20th. May be it is a case where a person can go back from Ernakulam to Palakkad and return on the next day having regard to the availability of train service and the distance to be covered. Under such circumstances, even if Ext.P4 certificate is to be considered as I would, that does not

necessarily turn round the findings of the enquiry officer and the disciplinary authority to treat those decisions as palpably perverse and so unreasonable that it would not have been arrived at by any reasonably advised prudent person.

9. Now, reverting to the credibility of the communication of the Southern Railways to the FCI regarding the date of issuance of the tickets, while it is the contention of the petitioner that there was no oral evidence in support of the documents, the said documents were notified to the petitioner before inquiry. It does not appear from the materials on record that the petitioner sought for examination of any witnesses to discredit the communication by the Southern Railways to the FCI. No personal interest or prejudice is pleaded or proved either during inquiry or in this writ proceedings as against the officials of the Southern Railways, touching the matter.

10. I may also notice and remind myself in this context, the principles relating to presumptions that would emanate out of

commonsense, which essentially is the basis for an adjudicator to understand the common course of human conduct. This essentially is the jurisprudential background and legislative wisdom in the crafting of section 114 of the Evidence Act, which would apply to judicial proceedings. The principles therein are founded on common sense and would aid in domestic enquiry and other proceedings, which may not be judical proceedings and also in quazi-judicial proceedings, even if the Evidence Act, as such, may not apply to such proceedings.

11. The Southern Railways, while it issues a communication regarding the contents or date of issuance of a ticket, has obviously to depend upon its official records and actions reflected by the records, the regularity and propriety of which is also a matter of presumption and is to be presumed except in exceptional situations. Such a presumption is attached to the communication given by the Southern Railways to the FCI. While such a presumption, which again is a matter of commonsense, is a permissible one, it may be open to one who

challenges it, to dislodge that presumption using any of the modes as are known, on the facts and circumstances of the case. But, no attempt was made by the petitioner in the enquiry proceedings to dislodge the presumption during the course of the inquiry. Therefore, the communication by the Railways to the FCI is a material which sufficiently supports the finding arrived at by the enquiry officer.

12. Having regard to what is aforesaid, while giving complete credit to Ext.P4 certificate, the contentions of the writ petitioner as against the findings under charge No.1 are only to be rejected. I do so. I find no unreasonableness or perversity in the findings entered by the enquiry officer and the disciplinary authority as regards charge No.1.

13. The findings under charge No.2 are essentially complimentary or dependent upon the allegations and findings under charge No.1 relating to the presentation of the journey tickets as if they were tickets regarding journey on the 12th and

19th of March, 1994. Therefore, the disciplinary authority cannot be found fault with for having disagreed with the enquiry officer on that count.

14. I also do not find any procedural illegality or irregularity in the matter of the disciplinary proceedings.

In the result, the writ petition fails. The same is accordingly dismissed. No costs.

THOTTATHIL B.RADHAKRISHNAN
Judge

kkb.

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THOTTATHIL B. RADHAKRISHNAN, J

O.P.NO.14813 OF 1997

JUDGMENT

23rd MAY, 2007.

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